

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TANIKO SMITH,

Case No. 2:21-cv-00264-RFB-DJA

Petitioner,

## ORDER

V.

NEVADA DEPARTMENT OF  
CORRECTIONS, et al.,

## Respondents.

Petitioner Taniko Smith, a Nevada prisoner proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1-1 (“Petition”)).) This matter is before the Court for preliminary review pursuant to the Rules Governing Section 2254 Cases in the United States District Courts.<sup>1</sup> For the reasons discussed below, the Petition is dismissed following preliminary review.

Under Habeas Rule 4, the assigned judge must examine a habeas petition and order a response unless it “plainly appears” that the petitioner is not entitled to relief. Habeas Rule 4; see also Valdez v. Montgomery, 918 F.3d 687, 693 (9th Cir. 2019). Federal law provides two main avenues to relief on complaints related to incarceration: (1) a petition for habeas corpus, 28 U.S.C. §§ 2241, 2254, 2255; and (2) a complaint under the Civil Rights Act of 1871, 42 U.S.C. § 1983. See Muhammad v. Close, 540 U.S. 749, 750 (2004). A state prisoner’s habeas claim is cognizable under § 2254 only if it falls within the “core” of habeas. Nettles v. Grounds, 830 F.3d 922, 930 (9th Cir. 2016) (en banc). If success on a habeas claim would not necessarily lead to a petitioner’s

<sup>1</sup>All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

1 immediate or earlier release from custody, the claim does not fall within “the core of habeas  
 2 corpus” and must be brought, “if at all,” under 42 U.S.C. § 1983. Id. at 931.

3 In Nettles, a prisoner serving a life sentence with the possibility of parole was found guilty  
 4 of a disciplinary infraction, which caused 30 days of good time credits to be revoked. 830 F.3d at  
 5 925–26. Nettles filed a federal habeas petition seeking restoration of the good time credits and  
 6 expungement of the rule violation report that led to the loss of good time credits. Id. at 927. The  
 7 Ninth Circuit held that Nettles’ claim was not cognizable in habeas. Id. at 934–35. Habeas relief  
 8 is not available for “probabilistic claims,” i.e., where success on the claims “could potentially  
 9 affect the duration of confinement” or is “likely to accelerate the prisoner’s eligibility for parole.”  
 10 Id. at 933–34 (quotation omitted). In short, a prisoner cannot bring a federal habeas petition “where  
 11 ‘a successful challenge to a prison condition will not necessarily shorten the prisoner’s sentence.’”  
 12 Id. at 933 (quoting Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003)). Because the parole  
 13 board could have denied parole, even if Nettles succeeded in expunging the rules violation report,  
 14 the Ninth Circuit held that a meritorious habeas claim would not necessarily lead to his immediate  
 15 or earlier release. Id. at 935. Thus, his claim was not within “the core of habeas corpus” and could  
 16 not be brought under § 2254 but must be pursued under § 1983, if at all. Id. (quoting Skinner v.  
 17 Switzer, 562 U.S. 521, 535 n.13 (2011)).

18 Here, Petitioner is serving a life sentence for a crime that took place in 1993. (ECF No. 1-  
 19 1 at 2.) Due to the timing of his crime, Petitioner explains that he is eligible to seek a pardon after  
 20 serving a minimum of 20 years in prison. (Id.) However, Petitioner explains that he received an  
 21 unfounded disciplinary infraction, and the grievance process took approximately three years—  
 22 from 2017 to 2020—because his grievance and appeal paperwork were lost by the Nevada  
 23 Department of Corrections. (Id. at 3, 6.) During this three-year period, Petitioner was unable to

1 apply for a pardon, even though he had served the minimum time in prison. (Id. at 2.) Further, the  
 2 disciplinary infraction “will likely prevent [him] from receiving any type [of] commutation of  
 3 sentence” in the future. (Id. at 3.) Based on these allegations, Petitioner asserts that his due process  
 4 and equal protection rights were violated by the loss of his grievance paperwork, the failure to  
 5 send him a response at every level of the grievance process, and the prevention of his ability to  
 6 appeal the determination of guilt. (Id. at 7.) Petitioner requests that his Court expunge his  
 7 disciplinary infraction “so that [he] may apply to the pardons and clemency boards with a[n] honest  
 8 chance to be release on parole.” (Id. at 11.)

9 Success on the merits of Petitioner’s claims would not necessarily lead to immediate or  
 10 speedier release because (1) Petitioner has already been granted parole,<sup>2</sup> and (2) the expungement  
 11 of the challenged disciplinary infraction would not necessarily lead to a grant of a pardon or parole.  
 12 Regarding the latter point, under Nevada law, the parole board has the authority and discretion to  
 13 grant or deny parole, and the pardons board has the authority and discretion to grant or deny a  
 14 pardon. Wydeven v. Warden, Lovelock Corr. Ctr., 238 P.3d 867 (Nev. 2008) (citing Nev. Rev.  
 15 Stat. § 213.1099(2)) (“The decision of whether or not to grant parole lies within the discretion of  
 16 the parole board and the creation of standards does not restrict the Parole Board’s discretion to  
 17 grant or deny parole.”); Powell v. State, No. 76448, 2019 WL 1245614, at \*1 n.2 (Nev. March 15,  
 18 2019) (“The power to pardon and commute lies within the discretion of the Pardons Board.”).  
 19 Consequently, Petitioner’s claims do not fall in the “core” of habeas and must be brought—if at  
 20 all—under 42 U.S.C. § 1983.<sup>3</sup> See Sandin v. Conner, 515 U.S. 472, 487 (1995) (although  
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22       <sup>2</sup>Following the filing of his Petition, according to the state corrections department’s inmate  
 locator page, Petitioner was granted parole on or about February 17, 2022.

23       <sup>3</sup>The Court has not completed a review of other potential issues that may arise if Petitioner  
 files a § 1983 complaint. This order does not explicitly or implicitly find that a § 1983 complaint  
 would be free of deficiencies, procedural or otherwise. In addition, the Court expresses no opinion

1 disciplinary conviction may not help inmate seeking release on parole, it is only one of “myriad of  
 2 considerations” relevant to parole decision and does not inevitably affect the length of the  
 3 prisoner’s sentence); see also Stanhope v. Ryan, No. CV-14-00310-TUC-BPV, 2017 WL  
 4 1163303, at \*8 (D. Ariz. Mar. 29, 2017) (explaining that “even if Petitioner were to succeed on his  
 5 claim that he was improperly denied a commutation hearing, it does not necessarily follow that  
 6 such a determination would result in his immediate release from custody or the shortening of his  
 7 sentence” because “the absence of a commutation hearing in this case does not compel the grant  
 8 of clemency”).

9 Furthermore, Petitioner’s fails to allege a cognizable federal habeas claim. The  
 10 Antiterrorism and Effective Death Penalty Act “places limitations on a federal court’s power to  
 11 grant a state prisoner’s federal habeas petition.” Hurles v. Ryan, 752 F.3d 768, 777 (9th Cir. 2014)  
 12 (citing Cullen v. Pinholster, 563 U.S. 170, 181 (2011)). A state prisoner is entitled to federal habeas  
 13 relief only if he is being held in custody in violation of the constitution, laws, or treaties of the  
 14 United States. See 28 U.S.C. § 2254(a). “Thus, a habeas corpus petition must allege a deprivation  
 15 of one or more federal rights to present a cognizable federal habeas corpus claim.” Burkey v.  
 16 Deeds, 824 F. Supp. 190, 192 (D. Nev. 1993). In narrow circumstances, a state law may create a  
 17 constitutionally protected liberty interest if the law (1) sets forth the substantive predicates to  
 18 govern the official decision-making and (2) contains explicitly mandatory language, i.e., a specific  
 19 directive to the decision-maker that mandates a particular outcome when the substantive predicates  
 20 have been met. See, e.g., Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 462 (1989).

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23 regarding the exhaustion of administrative remedies, which is a prerequisite to filing a complaint  
 presenting constitutional claims to the federal courts. 42 U.S.C. § 1997e (Prison Litigation Reform  
 Act or “PLRA”); Nettles, 830 F.3d at 932.

1       Federal habeas relief is unavailable “for errors of state law.” Lewis v. Jeffers, 497 U.S.  
 2 764, 780 (1990). A state’s interpretation of its own laws or rules provides no basis for federal  
 3 habeas relief because no federal question arises. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)  
 4 (federal courts may not reexamine state court decisions on state law issues). A petitioner “may not  
 5 transform a state-law issue into a federal one merely by asserting a violation of due process.”  
 6 Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1997).

7       Although Petitioner mentions “due process” and “equal protection” in his Petition, his  
 8 claims appear to present no federal question because they appear to involve only the application  
 9 or interpretation of state law regarding prison disciplinary proceedings. See Swarthout v. Cooke,  
 10 562 U.S. 216, 220-22 (2011) (noting that the Supreme Court has “long recognized that a mere  
 11 error of state law is not a denial of due process”). Further, Nevada inmates possess no liberty  
 12 interest in being released on parole. Moor v. Palmer, 603 F.3d 658, 662-63 (9th Cir. 2010).

13       The Court declines to recharacterize the Petition as a § 1983 complaint. When a habeas  
 14 petition is amenable to conversion on its face, federal courts may construe the petition to plead  
 15 causes of action under § 1983. Nettles, 830 F.3d. at 935–36; see also Wilwording v. Swenson, 404  
 16 U.S. 249, 251 (1971). However, habeas actions and § 1983 prisoner civil rights cases “differ in a  
 17 variety of respects—such as the proper defendant, filing fees, the means of collecting them, and  
 18 restrictions on future filings—that may make recharacterization impossible or, if possible,  
 19 disadvantageous to the prisoner compared to a dismissal without prejudice of his petition for  
 20 habeas corpus.” Nettles, 830 F.3d. at 935–36 (quotation omitted); see also United States v. Seesing,  
 21 234 F.3d 456, 464 (9th Cir. 2000) (holding that a court should not recharacterize a prisoner’s pro  
 22 se filing as a federal habeas petition when doing so may be to the prisoner’s disadvantage). In this  
 23 case, the Petition is not amenable to conversion on its face because it is not clear that Petitioner

1 has named the proper defendant or whether recharacterization would disadvantage Petitioner. The  
2 Court therefore dismisses the petition without prejudice and instructs the Clerk of Court to send  
3 Petitioner a form complaint for § 1983 civil rights actions.

4 **IT IS THEREFORE ORDERED:**

- 5 1. Petitioner Taniko Smith's Petition for Writ of Habeas Corpus (ECF No. 1-1) is  
6 DISMISSED WITHOUT PREJUDICE.
- 7 2. Petitioner is DENIED a certificate of appealability, as jurists of reason would not  
8 find the dismissal of this action on the grounds set forth above to be debatable or  
9 wrong.
- 10 3. Petitioner's Application to Proceed In Forma Pauperis (ECF No. 1) is DENIED as  
11 moot.
- 12 4. The Clerk of Court is directed to:
  - 13 a. FILE the Petition (ECF No. 1-1).
  - 14 b. MAKE INFORMAL ELECTRONIC SERVICE upon Respondents  
15 by adding Nevada Attorney General Aaron D. Ford as counsel for  
16 Respondents and directing a notice of electronic filing of the  
17 Petition (ECF No. 1-1) and this order to his office under Rule 4 of  
18 the Rules Governing Section 2254 Cases. No response is required  
19 from Respondents other than to respond to any orders of a  
20 reviewing court.
  - 21 c. ENTER final judgment and CLOSE this case.
  - 22 d. SEND Petitioner (1) one blank copy of the in forma pauperis  
23 application for prisoners, (2) one blank copy of the form complaint

1 for § 1983 civil rights actions, and (3) a copy of the Petition (ECF  
2 No. 1-1) along with this order.

3 Dated: August 9, 2022

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5 RICHARD F. BOULWARE, II  
6 UNITED STATES DISTRICT COURT  
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